

## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 WRI GOLDEN STATE, LLC,

No. C-07-1480 MMC

12 Plaintiff,

**ORDER DENYING WRI'S MOTION TO  
DISMISS COUNTERCLAIM**

13 v.

14 SAVE MART SUPERMARKETS,

15 Defendant

16 /

17 WRI has moved to dismiss SAVE MART's counterclaim for declaratory relief for  
18 failure to join Wal-Mart as a required party. WRI argues that SAVE MART is attempting to  
19 prevent or limit the operation of the proposed Wal-Mart store by seeking declaratory relief  
20 to enforce its contractual rights against WRI. If Save Mart succeeds, WRI says, Wal-Mart's  
21 interest will be impaired.

22 WRI's motion is without merit. First, it is well-settled that "[a] nonparty to a  
23 commercial contract ordinarily is not a necessary party to an adjudication of rights under  
24 the contract." *Northrop Corp. v. McDonnell Douglas Corp.*, 705 F.2d 1030, 1044 (9<sup>th</sup> Cir.  
25 1983 (citing cases). Second, Wal-Mart, which undoubtedly is aware of the controversy, has  
26 not chosen to intervene as it would be entitled to do under F.R. Civ. P. 24(a)(2) if it thought  
27 that "the disposition of [this] action may as a practical matter impair or impede [its] ability to  
28 protect that interest." *United States v. San Juan Bay Marina*, 239 F.3d 400, 406-07 (1<sup>st</sup> Cir.

1 2001), stating

2 "Since its decision to forgo intervention indicates that the Commonwealth  
3 does not deem its own interest substantially threatened by the litigation, the  
4 court should not second-guess this determination, at least absent special  
circumstances."

5 The motion is denied.

6 **IT IS SO ORDERED.**

7 Dated: June 24, 2008

8 /s/ William W Schwarzer  
9 WILLIAM W SCHWARZER  
United States District Judge

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